

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PRIMA CREATIONS, INC.	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No.
	:	
DOLGENCORP, LLC and DOLLAR	:	
GENERAL CORPORATION	:	
	:	
Defendants	:	
	:	

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, Prima Creations, Inc. (“Prima Creations”), by way of Complaint against Defendants Dolgencorp, LLC and Dollar General Corporation (collectively “Dollar General”) on knowledge, information and belief, alleges as follows:

Nature of the Action

1. This is a civil action arising under the laws of the United States, specifically 17 U.S.C. § 501 for copyright infringement and under 15 U.S.C § 1125(a) (Section 43(a) of the Lanham Act) for trade dress infringement and unfair competition.

Jurisdiction and Venue

2. This court has subject matter jurisdiction pursuant to 28 U.S.C § 1331 (actions arising under the laws of the United States), 28 U.S.C § 1338(a) (acts of Congress relating to copyrights and trademarks) and 28 U.S.C. § 1338(b) (unfair competition) and 15 U.S.C § 1121 (Lanham Act).

3. Venue is proper in this district under 28 U.S.C. § 1391.

4. The Defendants have conducted acts of infringement and unfair competition in this District subjecting it to the personal jurisdiction of this Court. Defendants sell, advertise, market and operate numerous Dollar General stores within this District, including but not limited to several Dollar General retail stores in Philadelphia, Pennsylvania and surrounding areas.

Parties

5. Prima Creations, Inc. is a California corporation, with a principal place of business at 1150 Las Brisas Pl., Placentia, CA 92870.

6. On information and belief, Dolgencorp, LLC doing business as Dollar General is a Tennessee corporation with a principal place of business at 100 Mission Ridge, Goodlettsville, TN 37072.

7. On information and belief, Dollar General Corporation doing business as Dollar General is a Tennessee corporation with a principal place of business at 100 Mission Ridge, Goodlettsville, TN 37072.

Factual Background

8. Prima Creations has created more than 500 decorative designs for Christmas, Halloween and other holidays and holds copyrights for many of these designs. For more than 18 years, Prima Creations has sold this copyrighted merchandise through several major retailers, such as Sears, Kmart and Walmart to millions of customers throughout the United States.

9. Prima Creations has spent significant amounts of money, time and effort in designing and promoting its copyrighted products, and many national chain stores and local retailers carry Prima Creation's design products because of their quality and uniqueness.

10. Prima Creations designs and sells uniquely shaped and brightly colored Elf Hats, especially during the Christmas season.

11. The Elf Hat is copyrighted and covered by United States Copyright Registration. Prima Creations has filed and obtained copyright certification VA1-664-992. *See* Exhibit 1.

12. Among the exclusive rights granted to Prima Creations under the Copyright Act are the exclusive rights to reproduce the copyrighted product and to distribute the copyrighted product to the public.

13. Defendants, without the consent or permission of Prima Creations, sell and/or have sold Elf Hats, including Dollar General Product #400025255339-410, which are exact copies of Prima Creation's Elf Hats.

14. In December 2011, Dollar General was notified of the infringement, but continued to sell the infringing Elf Hats.

15. Upon information and belief, Dollar General has sold more than 60,000 infringing Elf Hats.

16. Defendants have violated Plaintiff's exclusive rights of reproduction and distribution.

17. Defendants' actions constitute infringement of Plaintiff's copyrights and exclusive rights under copyright.

18. Plaintiff is informed and believes that the foregoing acts of infringement have been willful and intentional, in disregard of and with indifference to the rights of Plaintiff.

Count I
Copyright Infringement

19. Paragraphs 1-18 are incorporated herein by reference as if stated fully herein.

20. Defendants have sold and are selling infringing copies of Plaintiff's copyrighted products, in violation of 17 U.S.C § 501, resulting in harm, including, but not limited to, damages to Plaintiff's sales, reputation, profits and business.

21. As a direct and proximate result of Defendants' infringement of Plaintiff's copyrighted products, Plaintiff has suffered and continues to suffer damages.

22. On information and belief, Defendants have made profits to which it is not entitled in law or in equity.

23. Defendants' acts have been willful and/or with a wanton and reckless disregard for Prima Creations' rights.

24. As a result of Defendants' infringement of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of each of the copyrighted products. Plaintiff further is entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

25. The conduct of Defendants is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff great and irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502 and 503, Plaintiff is entitled to injunctive relief prohibiting Defendants from further infringing Plaintiff's copyrights, and ordering Defendants to destroy all copies of the infringing products made in violation of Plaintiff's exclusive rights.

Count II
Trade Dress Infringement and Unfair Competition

26. Paragraphs 1-25 are incorporated herein by reference as if stated fully herein.

27. Prima Creation's unique and colorful Elf Hats are widely recognized by consumers and has become a valuable indicator of the source and origin of Plaintiff's products.

28. Defendants' use in commerce of a copied Elf Hat confusingly similar to that of Prima Creations is likely to cause confusion, or to cause mistake, or to deceive as to the

affiliation, connection or association of Defendants with Prima Creations, or as to the origin, sponsorship or approval of Defendants' goods, services or commercial activities with Plaintiff in violation of 15 U.S.C. § 1125(a) (Section 43(a) of the Lanham Act).

29. As a direct and proximate result of Defendants' infringement of Plaintiff's trade dress, Plaintiff has suffered and continues to suffer damages to its sales, profits, reputation and business.

Count III
Unjust Enrichment

30. Paragraphs 1-29 are incorporated herein by reference as if stated fully herein.

31. Defendants received and retained a benefit by copying Prima Creation's designs, through improper means, which Defendants used to sell Elf Hats.

32. It would be inequitable and unconscionable for Defendants to retain the benefits without paying its value.

33. As a result of Defendants action, Defendants have been unjustly enriched to Prima Creation's detriment.

34. As a result of Defendants' actions, Prima Creations has suffered damages for which Defendant is liable.

WHEREFORE, Prima Creations, Inc. respectfully requests the Court:

- a) enter judgment in favor of Prima Creations, Inc. on all counts of the complaint;
- b) find that Defendants have engaged in copyright infringement in violation of 17 U.S.C. § 501;

c) find that Defendants have engaged in trade dress infringement and unfair competition in violation of 15 U.S.C. § 1125(a);

d) preliminarily and permanently enjoin, restrain and forbid Defendants from imitating, copying, duplicating or otherwise making any use of Plaintiff's copyrighted designs.

e) ordering Defendants to account to Plaintiff for all gains, profits, and advantages derived by Defendants by their infringement of Plaintiff's copyrights or such damages as are proper, and since Defendants intentionally infringed plaintiff's copyrights, for the maximum allowable statutory damages for each violation;

f) award Plaintiff actual and/or statutory damages for Defendants' copyright infringement in an amount to be determined;

e) award Plaintiff reasonable attorneys' fees, costs, expenses and disbursements in this action, pursuant to 17 U.S.C. § 505; and

e) grant to Prima Creations such other further relief as the Court may deem just and proper.

Respectfully submitted,

Ryder, Lu, Mazzeo & Konieczny, LLC

Date: September 20, 2012

/s/ Kao H Lu
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